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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 26th April, 2023

No. 13/1/9972-HII(2)-2023/5711.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 8/2022 dated 29.03.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SHALLU LIKHI D/O SH. SUDARSHAN, AGED 35 YEARS, 289, MILK COLONY, DHANAS, U.T., CHANDIGARH (AADHAR CARD NO. 9551 9051 1453) (MOBILE NO. 9780454549).
(Workman)

AND

GOVERNMENT MEDICAL COLLEGE AND HOSPITAL THROUGH ITS DIRECTOR/
PRINCIPAL, SECTOR 32, CHANDIGARH. (Management)

AWARD

1. Shallu Likhi, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the Government Medical College & Hospital, Sector 32, Chandigarh (*hereinafter referred as 'GMCH'*) issued an advertisement on 21.01.2010 for appointment as Clerks on a consolidated salary of ₹ 9,500/- per month on contractual basis for a period of six months. The qualification for appointment as a Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English. Applications were to be submitted to the college on or before 19.02.2010. The workman applied for the post of Clerk. She was called for typing test on 03.07.2010 and thereafter she was shortlisted / found provisionally eligible for interview, for which public notice was issued directing the shortlisted candidates to appear for interview on 30.07.2010. Workman was directed to undergo medical fitness examination and the workman appeared for the medical examination. On the basis of the qualifications, typing test and interview, the workman was selected and appointed as a Clerk on contract basis on a consolidated salary on ₹ 9,500/- per month for a period of six months vide order dated 11.08.2010 bearing endorsement No.GMCH/Estt./III/EA4/10/47886-94 dated 18.08.2010. The workman joined as a Clerk on 01.09.2010. The above facts leave no manner of doubt that the appointment had been made in a transparent manner and the procedure, which is required to be followed for appointment on regular basis, was followed in case of workman before appointing her. The workman had

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been continuing in uninterrupted service w.e.f. 01.09.2010 when all of sudden her services were terminated on 09.04.2021 vide termination order bearing Endorsement No.GMCH/Estt./III/EA1/2021/14611-20 dated 09.04.2021 without issuance of any charge sheet, holding any inquiry or payment of any retrenchment compensation. The workman had rendered more than 11 years of continuous service. The workman submitted a demand notice dated 30.04.2021 under registered AD post to the Director Principal of GMCH for reinstatement in service with full back wages and continuity of service. The conciliation proceedings conducted by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh failed. The failure report bears Memo No.253 dated 14.02.2022. The workman along with similar situated employees had filed OA No.060/00947 of 2016 titled as Shalu & Others Versus U.T. Chandigarh & Another before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh for striking down the unilateral and arbitrary clause in the appointment letter contrary to the Rules of appointment of appointment of the workman on contract basis. However, her services were terminated during the pendency of the OA, which has now become infructuous. The posts are still lying vacant and this fact would be evident from the fact that the workman was re-employed in the third week of April, 2021 as Data Entry Operator through outsourcing agency at a much less salary. Prayer is made that the workman may be reinstated into service with full back wages and continuity of service by adjusting the salary paid to her through the outsourcing agency after her re-employment.

2. On notice, the management appeared through Law Officer and contested the claim statement by filing written reply on 29.07.2022 wherein preliminary objections are taken on the grounds that the appointments of the workman was purely on contract basis. As per Clause No.1 of the appointment letter i.e. TENURE:- the contract employment was for a period of six months further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee. Further as per condition No.9 of General Conditions of appointment letter, the contract appointment will not count as service and will not bestow upon the appointee any claim or right for regular appointment against any post in this institute. Since, the appointment was purely on contract basis as a stop gap arrangements for the emergency duties till the posts are filled on regular basis initially for six months, which was further extended from time to time on requirement basis, hence on filing up the said posts on regular basis by the Chandigarh Administration under Common Cadre System the existing tenure of contractual appointment was terminated by the GMCH to enable to join the new incumbents appointed on regular basis.

3. Further on merits, it is stated that the facts that publication of advertisement dated 21.01.2010 for appointment of Clerks on contract basis for a period of six months, qualification for appointment as Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English, last date of submission of application was 19.02.2010, appearance of the workman in typing test and interview and thereafter directing the workman to undergo medical fitness examination and joining of the workman on 01.09.2010 are replied in a formal manner being matter of record. Further similar stand is taken as taken in the preliminary objections. It is stated that the existing / last term of the contract has been got approved from the Finance Department through Secretary Medical Education and Research and the said term was extended up to the period mentioned against each or till the regular incumbent joins, whichever is earlier on 'last come first go' policy. In view of the aspect of joining of regular incumbent in the Chandigarh Administration, it was not feasible for GMCH to draw two salaries against one post. Hence, the tenure of the appointment of the workman was terminated as per the terms & conditions of the extension letter. GMCH vide letter dated 07.07.2021 filed the reply to the demand notice under Section 2-A of the ID Act before Assistant Labour Commissioner-cum-Conciliation Officer. As per record of their office, the workman has not got any relief / stay from Hon'ble Court in OA No.060/00947/2016 titled as Shalu and Others Versus U.T. Chandigarh & Others, which is still pending before the Hon'ble Central Administrative Tribunal (CAT), Chandigarh Bench, Chandigarh. The vacancies of Clerks against which the employees / workman were appointed on contract basis have been filled up on regular basis by the Chandigarh Administration under the Common Cadre System. The workman was well known of the fact that her appointment was purely on

contract basis as it was clearly mentioned in the advertisement as well as in the appointment orders. The workman joined after accepting the terms & condition of the appointment letter. After the six months of initial tenure of contractual appointment, the workman worked on extension / terms basis, which were extended upon the period of extension or till the regular incumbent joins, whichever is earlier on 'last come first go' policy basis. Prayer is made that the claim statement may be dismissed with costs being devoid of merits.

4. The workman filed replication to the written reply wherein the contents of the written reply except admitted facts on the claim statement, are denied as wrong and averments of claim statement are reiterated.

5. From the pleadings of the parties following issues were framed vide order dated 22.09.2022 :—

1. Whether the workman has been illegally terminated by the management ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW
3. Whether the appointment of the workman was purely contractual in nature ? OPM
4. Relief.

6. In evidence, the workman Shallu Likhi examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to 'W5'.

Exhibit 'W1' is copy of letter dated 10.06.2010 issued from Office Superintendent (Estt.) for Director Principal, GMCH, Sector-32, Chandigarh Establishment Branch-III relating to the subject of recruitment to the post of Clerk.

Exhibit 'W2' is copy of public notice issued by Director, Principal, GMCH, Sector 32, Chandigarh, relating to reference advertisement No. GMCH/Estt.III/EA4/03503 dated 21.01.2010.

Exhibit 'W3' is copy of order dated 11.08.2010 issued by Professor Raj Bahadur, Director, Principal, GMCH, Sector 32, Chandigarh whereby the appointment was offered against the post of Clerk in General Category purely on contract basis.

Exhibit 'W4' is copy of order dated 08.04.2021 issued by Director Principal GMCH Sector 32, Chandigarh incorporating the names of the candidates who were appointed as Clerk/Steno-Typist on direct Contract basis

Exhibit 'W5' is copy of failure report memo No. 253 dated 14.02.2022 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh.

On 14.03.2023 the workman closed her evidence in affirmative.

7. On the other hand, the management examined MW1 Gurdeep Singh - Senior Assistant, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'. On 24.03.2023 Learned Law Officer closed evidence on behalf of the management.

8. I have heard arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below :—

Issues No. 1 & 3 :

9 Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

10. Onus to prove issue No.1 is on the workman and onus to prove issue No.3 is on the management.

11. Workman Shallu Likhi examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported her oral version with documents Exhibit 'W1' to Exhibit 'W5'.

12. On the other hand, management examined MW1 Gurdeep Singh - Senior Assistant, GMCH, Sector 32, Chandigarh who vide his affidavit Exhibit 'MW1/A' deposed that the appointment was purely on contract basis and as per Clause No.1 of the appointment letter i.e. TENURE:- the contract employment was for a period of six months further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee. Further as per condition No.9 of General Conditions of appointment letter, the contract appointment will not count as service and will not bestow upon the appointee any claim or right for regular appointment against any post in this institute. Since, the appointment was purely on contract basis as a stop gap arrangements for the emergency duties till the posts are filled on regular basis initially for six months, which was further extended from time to time on requirement basis, hence on filing up the said posts on regular basis by the Chandigarh Administration under Common Cadre System the existing tenure of contractual appointment was terminated by the GMCH to enable to join the new incumbents appointed on regular basis. The existing / last term of the contract has been got approved from the Finance Department through Secretary Medical Education and Research and the said term was extended up to the period mentioned against each or till the regular incumbent joins, whichever is earlier on 'last come first go' policy. In view of the aspect of joining of regular incumbent in the Chandigarh Administration, it was not feasible for GMCH to draw two salaries against one post. Hence, the tenure of the appointment of the workman was terminated as per the terms & conditions of the extension letter. The vacancy of Clerk against which said employee was appointed on contract basis has been filled up on regular basis by the Chandigarh Administration under common cadre system. The workman was well known of the fact that her appointment was purely on contract basis as it was clearly mentioned in the advertisement as well as in the appointment orders. The workman joined after accepting the terms & condition of the appointment letter. After the six months of initial tenure of contractual appointment, the workman worked on extension / terms basis, which were extended upon the period of extension or till the regular incumbent joins, whichever is earlier on 'last come first go' policy basis.

13. From the oral as well documentary evidence led by the parties, it has come on record that there is no dispute between the parties with regard to the facts that GMCH issued an advertisement on 21.01.2010 for appointment as Clerks on a consolidated salary of ₹ 9,500/- per month on contractual basis for a period of six months. Further there is no dispute between the parties with regard to the fact that qualification for appointment as a Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English and last date for submitting the application was 19.02.2010. Further the facts remained undisputed between the parties that the workman applied for the post of Clerk and she was called for typing test on 03.07.2010 vide letter dated 10.06.2010 / Exhibit 'W1'. Further, there is no dispute between the parties with regard to the facts that the workman was selected and appointed as Clerk on contract basis vide order dated 11.08.2010 / Exhibit 'W3'. Learned Law Officer for the management failed to controvert the fact that on the basis of educational qualifications, typing test, performance in the interview and on the recommendations of the Selection Committee, the workman was selected to the post of Clerk. MW1 Gurdeep Singh when put to cross-examination admitted as correct that all the procedure has been followed by the management before issuing the advertisement of posts in the newspaper. MW1 further stated that typing test of candidates was taken and those who qualified the typing test were called for interview. MW1 admitted as correct that the workman had been selected against the sanctioned post. The workman has also not disputed the fact that she was engaged on contractual post for a period of six months, which was renewed after every six months. In this regard, AW1 Shallu Likhi in her cross-examination admitted as correct that initially she was engaged on contractual post for a period of six months. AW1 in her cross-examination further stated that her contractual appointment was renewed after every six months.

14. From the above stated facts and version of MW1 and AW1, it is duly proved on record that the workman applied for the post of Clerk in response to advertisement issued by the management and after qualifying the typing test she appeared before the Selection Committee for interview. The workman was selected to the post of Clerk and joined services with the management on 31.08.2010 on the basis of

appointment order dated 11.08.2010 / Exhibit 'W3'. The services of the workman were terminated on 09.04.2021 vide order Exhibit 'W4'. The management has not disputed the fact that the workman worked with the management for about 11 years against the sanctioned post of Clerk.

15. The workman has not disputed the fact that her services were purely contractual in nature. The dispute is confined to the legality of termination order Exhibit 'W4'. The Learned Law Officer has argued that since the services of the workman was contractual in nature and this fact was known to her since her joining on the basis of appointment letter Exhibit 'W3'. In the appointment letter Exhibit 'W3', under head 'Tenure', it is specifically mentioned that this appointment is purely on contract basis. The tenure of the contract appointment is initially for a period of six months, which is further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee or till the regular incumbent joins whichever is earlier. Learned Law Officer laid much stress upon the fact that all the sanctioned posts of the clerical staff of the management have merged with the common cadre of the Chandigarh Administration and the regular incumbent has joined at the place of workman, therefore, the termination of the workman is as per the condition incorporated in appointment letter Exhibit 'W3'. To support his contention Learned Law Officer referred cross-examination of MW1 Gurdeep Singh wherein he voluntarily stated that in their appointment letter it is mentioned that when the regular employee will join, they will be relieved from the duties. MW1 Gurdeep Singh in his cross-examination further stated that all the sanctioned posts of the clerical staff of the management will merge with the common cadre of the Chandigarh Administration. Learned Law Officer further referred cross-examination of AW1 Shallu Likhi wherein she has stated that her services were terminated by the management on selection of regular incumbent. On the other hand, Learned Representative for the workman has argued that the workman has completed 240 days of statutory period of service in 12 calendar months preceding her termination. Thus, the workman fulfils the requirement of Section 25-B of the ID Act and once the workman fulfils the requirement of Section 25-B of the ID Act, the services of the workman cannot be terminated except in compliance with the conditions incorporated in Section 25-F of the ID Act. In the present case, the management failed to comply with any of the conditions incorporated in Section 25-F of the ID Act. To support his arguments, Learned Representative for the workman referred cross-examination of MW1 Gurdeep Singh, wherein he stated that no charge sheet was issued and no retrenchment compensation was paid to the workman before dispensing with his / her services. To my opinion, the arguments advanced by Learned Representative for the workman carries force as it is well settled law that where pre-requisite for valid retrenchment as laid down in Section 25-F of the ID Act has not been complied with, retrenchment bringing about termination of service is ab-initio void. The relevant provisions of Section 25-F provides as under :—

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

16. The careful scrutiny of the appointment letter Exhibit 'W3' would reveal that as per Clause 4 under head 'Tenure', the contract appointment can be terminated at any time (on either side) by giving one

month's notice or by giving one month's salary, without assigning any reason or on account of failure to complete the period of contract appointment to the satisfaction of the competent authority. Similarly, in case, one month notice for resignation is not given, you will have to deposit the salary for the period falling short of one month alongwith the resignation letter.

17. In the present case, the workman has not submitted any resignation but it is the management, who has terminated the services of the workman vide order dated 08.04.2021 / Exhibit 'W4' w.e.f. 09.04.2021 (A.N.), meaning thereby that the management has not issued to workman one month's prior notice mentioning the reasons of termination or did not offer to pay or paid salary in lieu of notice period, which is violative to provisions of Section 25-F of the ID Act. The judgments of Hon'ble Apex Court referred by Learned Representative for the workman reported in *1989 SCC (L&S) 565* titled as *Narotam Chopra Versus Presiding Officer, Labour Court & Others* and reported in *2010(3) SLR 248* titled as *Ramesh Kumar Versus State of Haryana*, are applicable to the facts of the present case to an extent.

18. The creation of common cadre by the Chandigarh Administration does not mean that the vacancies against the sanctioned post / posts is / are not in existence.

19. In view of the reasons recorded above, though it is proved that the appointment of the workman was on contractual basis against the sanctioned post but termination of services of the workman being violative to Section 25-F of the ID Act is illegal and therefore the same is hereby set aside.

20. Accordingly, issue No.1 is proved in favour of the workman and against the management. Issue No.3 being not disputed needs no adjudication and stands decided accordingly.

Issue No. 2 :

21. Onus to prove this issue is on the workman.

22. This issue is necessary consequence of the findings of issue No.1. Since, issue No.1 is proved in favour of the workman and the termination order being illegal is set aside, thus the workman is entitled to reinstatement with continuity of service and 50% back wages. However, the terms & conditions of the service of the workman shall remain the same as incorporated in appointment letter Exhibit 'W3'.

23. Accordingly, this issue is proved in favour of the workman and against the management.

Relief :

24. In the view of foregoing finding on the issues above, this industrial dispute is allowed and the workman is reinstated into service with continuity of service and 50% back wages. However, the terms & conditions of the service of the workman shall remain the same as incorporated in appointment letter Exhibit 'W3'. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 29.03. 2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 26th April, 2023

No. 13/1/9971-HII(2)-2023/5715.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 12/2022 dated 29.03.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SHALU W/O SH. VINOD KUMAR, AGED 41 YEARS, R/O # 2305-A, SECTOR 19-C,
CHANDIGARH (AADHAR CARD NO. 6287 8207 7917) (MOBILE NO. 7508289445).
(Workman)

AND

GOVERNMENT MEDICAL COLLEGE AND HOSPITAL THROUGH ITS DIRECTOR/
PRINCIPAL, SECTOR 32, CHANDIGARH. (Management)

AWARD

1. Shalu, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the Government Medical College & Hospital, Sector 32, Chandigarh (*hereinafter referred as 'GMCH'*) issued an advertisement on 13.09.2009 for appointment as Clerks on a consolidated salary of ₹9,500/- per month on contractual basis for a period of six months. The qualification for appointment as a Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English. Applications were to be submitted to the college on or before 12.10.2009. The workman applied for the post of Clerk. She appeared for typing test and was called for interview on 14.01.2010 vide interview letter bearing No.GMCH/Estt.-/EA4/2010/00397-408 dated 06.01.2010. On the basis of educational qualifications, typing test and interview, the workman was selected and appointed as a Clerk on contract basis and public notice to this effect was also published in The Tribune on 22.01.2010. Workman was directed to undergo medical fitness examination and the workman appeared for the medical examination. On the basis of the recommendations of the Selection Committee, the workman was appointed as a Clerk in OBC category on contract basis on a consolidated salary on ₹9,500/- per month for a period of six months vide order dated 20.01.2010 bearing endorsement No.GMCH/Estt./III/EA4/2010/05504-15 dated 28.01.2010. The workman joined as a Clerk on 10.02.2010. The appointment of the workman was extended from time to time. The above facts leave no manner of doubt that the appointment had been made in a transparent manner and the procedure, which is required to be followed for appointment on regular basis, was followed in case of workman before appointing her. The workman had been continuing in uninterrupted service w.e.f. 10.02.2010 when all of sudden her services were terminated on 09.04.2021 vide termination order bearing Endorsement No.GMCH/Estt./III/EA1/2021/14611-20 dated 09.04.2021 without issuance of any charge sheet, holding any inquiry or payment of any retrenchment compensation. The workman had rendered more than 11 years of continuous service. The workman submitted a demand notice dated 30.04.2021 under registered AD post to the Director Principal of GMCH for reinstatement in service with full back wages and continuity of service. The conciliation proceedings conducted by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh failed. The failure report bears Memo No.247 dated 14.02.2022. The workman along with similar situated employees had filed OA No.060/00947 of 2016 titled as Shalu & Others Versus U.T. Chandigarh & Another before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh for striking down the unilateral and arbitrary clause in the appointment letter contrary to the Rules of appointment of appointment of the workman on contract basis. However, her services were terminated during the pendency of the OA, which

has now become infructuous. The posts are still lying vacant and this fact would be evident from the fact that the workman was re-employed in the third week of April, 2021 as Data Entry Operator through outsourcing agency at a much less salary. Prayer is made that the workman may be reinstated into service with full back wages and continuity of service by adjusting the salary paid to her through the outsourcing agency after her re-employment.

2. On notice, the management appeared through Law Officer and contested the claim statement by filing written reply on 29.07.2022 wherein preliminary objections are taken on the grounds that the appointments of the workman was purely on contract basis. As per Clause No.1 of the appointment letter i.e. TENURE:- the contract employment was for a period of six months further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee. Further as per condition No.9 of General Conditions of appointment letter, the contract appointment will not count as service and will not bestow upon the appointee any claim or right for regular appointment against any post in this institute. Since, the appointment was purely on contract basis as a stop gap arrangements for the emergency duties till the posts are filled on regular basis initially for six months, which was further extended from time to time on requirement basis, hence on filing up the said posts on regular basis by the Chandigarh Administration under Common Cadre System the existing tenure of contractual appointment was terminated by the GMCH to enable to join the new incumbents appointed on regular basis.

3. Further on merits, it is stated that the facts that publication of advertisement dated 13.09.2009 for appointment of Clerks on contract basis for a period of six months, qualification for appointment as Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English, last date of submission of application was 12.10.2019, appearance of the workman in typing test and interview and thereafter directing the workman to undergo medical fitness examination and joining of the workman on 10.02.2010 are replied in a formal manner being matter of record. Further similar stand is taken as taken in the preliminary objections. It is stated that the existing / last term of the contract has been got approved from the Finance Department through Secretary Medical Education and Research and the said term was extended up to the period mentioned against each or till the regular incumbent joins, whichever is earlier on 'last come first go' policy. In view of the aspect of joining of regular incumbent in the Chandigarh Administration, it was not feasible for GMCH to draw two salary against one post. Hence, the tenure of the appointment of the workman was terminated as per the terms & conditions of the extension letter. GMCH vide letter dated 07.07.2021 filed the reply to the demand notice under Section 2-A of the ID Act before Assistant Labour Commissioner-cum-Conciliation Officer. As per record of their office, the workman has not got any relief / stay from Hon'ble Court in OA No.060/00947/2016 titled as Shalu and Others Versus U.T. Chandigarh & Others, which is still pending before the Hon'ble Central Administrative Tribunal (CAT), Chandigarh Bench, Chandigarh. The vacancies of Clerks against which the employees / workman were appointed on contract basis have been filled up on regular basis by the Chandigarh Administration under the Common Cadre System. The workman was well known of the fact that her appointment was purely on contract basis as it was clearly mentioned in the advertisement as well as in the appointment orders. The workman joined after accepting the terms & condition of the appointment letter. After the six months of initial tenure of contractual appointment, the workman worked on extension / terms basis, which were extended upon the period of extension or till the regular incumbent joins, whichever is earlier on 'last come first go' policy basis. Prayer is made that the claim statement may be dismissed with costs being devoid of merits.

4. The workman filed replication to the written reply wherein the contents of the written reply except admitted facts on the claim statement, are denied as wrong and averments of claim statement are reiterated.

5. From the pleadings of the parties following issues were framed vide order dated 22.09.2022 :—

1. Whether the workman has been illegally terminated by the management ? OPW

2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW
3. Whether the appointment of the workman was purely contractual in nature ? OPM
4. Relief.

6. In evidence, the workman Shalu examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to 'W7'.

Exhibit 'W1' is copy of letter dated 06.01.2010 issued from Additional Director Admin, GMCH, Sector-32, Chandigarh Establishment Branch - III relating to the subject of interview for the post of Clerk on contractual basis in GMCH vide Exhibit 'W1'.

Exhibit 'W2' is copy of public notice dated 21.01.2010 issued by Director, Principal, GMCH, Sector-32, Chandigarh, relating to reference advertisement No. GMCH/Estt.III/2K9/39584 dated 11.09.2009.

Exhibit 'W3' is copy of letter dated 05.02.2010 issued by Superintendent (Estt.-III) for Additional Director (Admn.), GMCH, Sector-32, Chandigarh relating to the subject of medical fitness for appointment of Group 'C' official.

Exhibit 'W4' is copy of order dated 20.01.2010 issued by Professor Raj Bahadur, Director, Principal, GMCH, Sector-32, Chandigarh whereby the appointment was offered against the post of Clerk in S.C. Category purely on contract basis.

Exhibit 'W5' is copy of order dated 26.11.2014 issued by Professor Atul Sachdev, Director, Principal, GMCH, Sector-32, Chandigarh, whereby Ms. Shella Clerk (on direct basis) was allowed to change her name to Shalu.

Exhibit 'W6' is copy of order dated 08.04.2021 issued by Director Principal GMCH Sector-32, Chandigarh incorporating the names of the candidates, who were appointed as Clerk/Steno-Typist on direct Contract basis.

Exhibit 'W7' is copy of failure report memo No. 247 dated 14.02.2022 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh.

On 14.03.2023 the workman closed her evidence in affirmative.

7. On the other hand, the management examined MW1 Gurdeep Singh - Senior Assistant, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'. On 24.03.2023 Learned Law Officer closed evidence on behalf of the management.

8. I have heard arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below :—

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9. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

10. Onus to prove issue No.1 is on the workman and onus to prove issue No.3 is on the management.

11. Workman Shalu examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported her oral version with documents Exhibit 'W1' to Exhibit 'W7'.

12. On the other hand, management examined MW1 Gurdeep Singh - Senior Assistant, GMCH, Sector 32, Chandigarh who vide his affidavit Exhibit 'MW1/A' deposed that the appointment was purely on contract basis and as per Clause No.1 of the appointment letter i.e. TENURE:- the contract employment was

for a period of six months further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee. Further as per condition No.9 of General Conditions of appointment letter, the contract appointment will not count as service and will not bestow upon the appointee any claim or right for regular appointment against any post in this institute. Since, the appointment was purely on contract basis as a stop gap arrangements for the emergency duties till the posts are filled on regular basis initially for six months, which was further extended from time to time on requirement basis, hence on filing up the said posts on regular basis by the Chandigarh Administration under Common Cadre System the existing tenure of contractual appointment was terminated by the GMCH to enable to join the new incumbents appointed on regular basis. The existing / last term of the contract has been got approved from the Finance Department through Secretary Medical Education and Research and the said term was extended up to the period mentioned against each or till the regular incumbent joins, whichever is earlier on 'last come first go' policy. In view of the aspect of joining of regular incumbent in the Chandigarh Administration, it was not feasible for GMCH to draw two salaries against one post. Hence, the tenure of the appointment of the workman was terminated as per the terms & conditions of the extension letter. The vacancy of Clerk against which said employee was appointed on contract basis has been filled up on regular basis by the Chandigarh Administration under common cadre system. The workman was well known of the fact that her appointment was purely on contract basis as it was clearly mentioned in the advertisement as well as in the appointment orders. The workman joined after accepting the terms & condition of the appointment letter. After the six months of initial tenure of contractual appointment, the workman worked on extension / terms basis, which were extended upon the period of extension or till the regular incumbent joins, whichever is earlier on 'last come first go' policy basis.

13. From the oral as well documentary evidence led by the parties, it has come on record that there is no dispute between the parties with regard to the facts that vide order dated 21.11.2014 / Exhibit 'W5' workman Shalu was allowed to change of her name from 'Sheela' to 'Shalu' and GMCH issued an advertisement on 13.09.2009 for appointment as Clerks on a consolidated salary of ₹ 9,500/- per month on contractual basis for a period of six months. Further there is no dispute between the parties with regard to the fact that qualification for appointment as a Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English and last date for submitting the application was 12.10.2009. Further the facts remained undisputed between the parties that the workman applied for the post of Clerk and had appeared for typing test and was called for interview on 14.01.2010 vide interview letter dated 06.01.2010 / Exhibit 'W1'. Further, there is no dispute between the parties with regard to the facts that the workman was selected and appointed as Clerk on contract basis and public notice / Exhibit 'W2' to this effect was published in The Tribune on 22.01.2010 and thereafter the workman vide letter bearing Endorsement dated 05.02.2010 / Exhibit 'W3' was directed to appear for medical examination and appointment order dated 20.01.2010 / Exhibit 'W4' was issued to the workman. Learned Law Officer for the management failed to controvert the fact that on the basis of educational qualifications, typing test, performance in the interview and on the recommendations of the Selection Committee, the workman was selected to the post of Clerk. MW1 Gurdeep Singh when put to cross-examination admitted as correct that all the procedure has been followed by the management before issuing the advertisement of posts in the newspaper. MW1 further stated that typing test of candidates was taken and those who qualified the typing test were called for interview. MW1 admitted as correct that the workman had been selected against the sanctioned post. The workman has also not disputed the fact that she was engaged on contractual post for a period of six months, which was renewed after every six months. In this regard, AW1 Shalu in her cross-examination admitted as correct that initially she was engaged on contractual post for a period of six months. AW1 in her cross-examination further stated that her contractual appointment was renewed after every six months.

14. From the above stated facts and version of MW1 and AW1, it is duly proved on record that the workman applied for the post of Clerk in response to advertisement issued by the management and after

qualifying the typing test she appeared before the Selection Committee for interview. The workman was selected to the post of Clerk and joined services with the management on 10.02.2010 on the basis of appointment order dated 20.01.2010 / Exhibit 'W4'. The services of the workman were terminated on 09.04.2021 vide order Exhibit 'W6'. The management has not disputed the fact that the workman worked with the management for about 11 years against the sanctioned post of Clerk.

15. The workman has not disputed the fact that her services were purely contractual in nature. The dispute is confined to the legality of termination order Exhibit 'W6'. The Learned Law Officer has argued that since the services of the workman was contractual in nature and this fact was known to her since her joining on the basis of appointment letter Exhibit 'W4'. In the appointment letter Exhibit 'W4', under head 'Tenure', it is specifically mentioned that this appointment is purely on contract basis. The tenure of the contract appointment is initially for a period of six months, which is further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee or till the regular incumbent joins whichever is earlier. Learned Law Officer laid much stress upon the fact that all the sanctioned posts of the clerical staff of the management have merged with the common cadre of the Chandigarh Administration and the regular incumbent has joined at the place of workman, therefore, the termination of the workman is as per the condition incorporated in appointment letter Exhibit 'W4'. To support his contention Learned Law Officer referred cross-examination of MW1 Gurdeep Singh wherein he voluntarily stated that in their appointment letter it is mentioned that when the regular employee will join, they will be relieved from the duties. MW1 Gurdeep Singh in his cross-examination further stated that all the sanctioned posts of the clerical staff of the management will merge with the common cadre of the Chandigarh Administration. Learned Law Officer further referred cross-examination of AW1 Shalu wherein she has stated that her services were terminated by the management on selection of regular incumbent. On the other hand, Learned Representative for the workman has argued that the workman has completed 240 days of statutory period of service in 12 calendar months preceding her termination. Thus, the workman fulfils the requirement of Section 25-B of the ID Act and once the workman fulfils the requirement of Section 25-B of the ID Act, the services of the workman cannot be terminated except in compliance with the conditions incorporated in Section 25-F of the ID Act. In the present case, the management failed to comply with any of the conditions incorporated in Section 25-F of the ID Act. To support his arguments, Learned Representative for the workman referred cross-examination of MW1 Gurdeep Singh, wherein he stated that no charge sheet was issued and no retrenchment compensation was paid to the workman before dispensing with his / her services. To my opinion, the arguments advanced by Learned Representative for the workman carries force as it is well settled law that where pre-requisite for valid retrenchment as laid down in Section 25-F of the ID Act has not been complied with, retrenchment bringing about termination of service is *ab-initio* void. The relevant provisions of Section 25-F provides as under :—

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

16. The careful scrutiny of the appointment letter Exhibit 'W4' would reveal that as per Clause 4 under head 'Tenure', the contract appointment can be terminated at any time (on either side) by giving one month's notice or by giving one month's salary, without assigning any reason or on account of failure to complete the period of contract appointment to the satisfaction of the competent authority. Similarly, in case, one month notice for resignation is not given, you will have to deposit the salary for the period falling short of one month alongwith the resignation letter.

17. In the present case, the workman has not submitted any resignation but it is the management, who has terminated the services of the workman vide order dated 08.04.2021 / Exhibit 'W6' w.e.f. 09.04.2021 (A.N.), meaning thereby that the management has not issued to workman one month's prior notice mentioning the reasons of termination or did not offer to pay or paid salary in lieu of notice period, which is violative to provisions of Section 25-F of the ID Act. The judgments of Hon'ble Apex Court referred by Learned Representative for the workman reported in *1989 SCC (L&S) 565* titled as *Narotam Chopra Versus Presiding Officer, Labour Court & Others* and reported in *2010(3) SLR 248* titled as *Ramesh Kumar Versus State of Haryana*, are applicable to the facts of the present case to an extent.

18. The creation of common cadre by the Chandigarh Administration does not mean that the vacancies against the sanctioned post / posts is / are not in existence.

19. In view of the reasons recorded above, though it is proved that the appointment of the workman was on contractual basis against the sanctioned post but termination of services of the workman being violative to Section 25-F of the ID Act is illegal and therefore the same is hereby set aside.

20. Accordingly, issue No.1 is proved in favour of the workman and against the management. Issue No.3 being not disputed needs no adjudication and stands decided accordingly.

Issue No.2 :

21. Onus to prove this issue is on the workman.

22. This issue is necessary consequence of the findings of issue No.1. Since, issue No.1 is proved in favour of the workman and the termination order being illegal is set aside, thus the workman is entitled to reinstatement with continuity of service and 50% back wages. However, the terms & conditions of the service of the workman shall remain the same as incorporated in appointment letter Exhibit 'W4'.

23. Accordingly, this issue is proved in favour of the workman and against the management.

Relief :

24. In the view of foregoing finding on the issues above, this industrial dispute is allowed and the workman is reinstated into service with continuity of service and 50% back wages. However, the terms & conditions of the service of the workman shall remain the same as incorporated in appointment letter Exhibit 'W4'. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . .,

Dated : 29.03. 2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 28th April, 2023

No. 13/1/9969-HII(2)-2023/5825.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 11/2022 dated 29.03.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between:

VIJAY KUMAR S/O SH. BARKHA RAM, AGED 34 YEARS, R/O #309, MILK COLONY,
DHANAS, U.T. CHANDIGARH (AADHAR CARD NO. 7982 5599 2842)
(MOBILE NO. 9779188515). (Workman)

AND

GOVERNMENT MEDICAL COLLEGE AND HOSPITAL THROUGH ITS DIRECTOR/
PRINCIPAL, SECTOR 32, CHANDIGARH. (Management)

AWARD

1. Vijay Kumar, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that the Government Medical College & Hospital, Sector 32, Chandigarh (*hereinafter referred as 'GMCH'*) issued an advertisement on 21.01.2010 for appointment as Clerks on a consolidated salary of ₹ 9,500/- per month on contractual basis for a period of six months. The qualification for appointment as a Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English. Applications were to be submitted to the college on or before 19.02.2010. The workman applied for the post of Clerk. He was called for typing test on 03.07.2010 and thereafter he was shortlisted / found provisionally eligible for interview, for which public notice was issued directing the shortlisted candidates to appear for interview on 30.07.2010. Workman was directed to undergo medical fitness examination and the workman appeared for the medical examination. On the basis of the qualifications, typing test and interview, the workman was selected and appointed as a Clerk on contract basis on a consolidated salary on ₹ 9,500/- per month for a period of six months vide order dated 24.08.2010 bearing endorsement No.GMCH/Estt./III EA4/10/49177-85 dated 26.08.2010. The workman joined as a Clerk on 01.09.2010. The above facts leave no manner of doubt that the appointment had been made in a transparent manner and the procedure, which is required to be followed for appointment on regular basis, was followed in case of workman before appointing him. The workman had been continuing in uninterrupted service w.e.f. 01.09.2010 when all of sudden his services were terminated on 09.04.2021 vide termination order bearing Endorsement No.GMCH/Estt./III/EA1/2021/14611-20 dated 09.04.2021 without issuance of any charge sheet, holding any inquiry or payment of any retrenchment compensation. The workman had rendered more than 11 years of continuous service. The workman submitted a demand notice dated 30.04.2021 under registered AD post to the Director Principal of GMCH for reinstatement in service with full back wages and continuity of service. The conciliation proceedings conducted by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh failed. The failure report bears Memo No.256 dated 14.02.2022. The workman along with similar situated employees had filed OA No.060/00947 of 2016 titled as Shalu & Others Versus U.T. Chandigarh & Another before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh for striking down the unilateral and arbitrary clause in the appointment letter contrary to the Rules of appointment of appointment of the workman on contract basis. However, his services were terminated during the pendency of the OA, which has now become infructuous. The posts are still lying vacant and this fact would be evident from the fact that the workman was re-employed in the third

week of April, 2021 as Data Entry Operator through outsourcing agency at a much less salary. Prayer is made that the workman may be reinstated into service with full back wages and continuity of service by adjusting the salary paid to him through the outsourcing agency after his re-employment.

2. On notice, the management appeared through Law Officer and contested the claim statement by filing written reply on 29.07.2022 wherein preliminary objections are taken on the grounds that the appointments of the workman was purely on contract basis. As per Clause No.1 of the appointment letter i.e. TENURE:- the contract employment was for a period of six months further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee. Further as per condition No.9 of General Conditions of appointment letter, the contract appointment will not count as service and will not bestow upon the appointee any claim or right for regular appointment against any post in this institute. Since, the appointment was purely on contract basis as a stop gap arrangements for the emergency duties till the posts are filled on regular basis initially for six months, which was further extended from time to time on requirement basis, hence on filing up the said posts on regular basis by the Chandigarh Administration under Common Cadre System the existing tenure of contractual appointment was terminated by the GMCH to enable to join the new incumbents appointed on regular basis.

3. Further on merits, it is stated that the facts that publication of advertisement dated 21.01.2010 for appointment of Clerks on contract basis for a period of six months, qualification for appointment as Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English, last date of submission of application was 19.02.2010, appearance of the workman in typing test and interview and thereafter directing the workman to undergo medical fitness examination and joining of the workman on 01.09.2010 are replied in a formal manner being matter of record. Further similar stand is taken as taken in the preliminary objections. It is stated that the existing / last term of the contract has been got approved from the Finance Department through Secretary Medical Education and Research and the said term was extended up to the period mentioned against each or till the regular incumbent joins, whichever is earlier on 'last come first go' policy. In view of the aspect of joining of regular incumbent in the Chandigarh Administration, it was not feasible for GMCH to draw two salaries against one post. Hence, the tenure of the appointment of the workman was terminated as per the terms & conditions of the extension letter. GMCH vide letter dated 07.07.2021 filed the reply to the demand notice under Section 2-A of the ID Act before Assistant Labour Commissioner-cum-Conciliation Officer. As per record of their office, the workman has not got any relief / stay from Hon'ble Court in OA No.060/00947/2016 titled as Shalu and Others Versus U.T. Chandigarh & Others, which is still pending before the Hon'ble Central Administrative Tribunal (CAT), Chandigarh Bench, Chandigarh. The vacancies of Clerks against which the employees / workman were appointed on contract basis have been filled up on regular basis by the Chandigarh Administration under the Common Cadre System. The workman was well known of the fact that his appointment was purely on contract basis as it was clearly mentioned in the advertisement as well as in the appointment orders. The workman joined after accepting the terms & condition of the appointment letter. After the six months of initial tenure of contractual appointment, the workman worked on extension / terms basis, which were extended upon the period of extension or till the regular incumbent joins, whichever is earlier on 'last come first go' policy basis. Prayer is made that the claim statement may be dismissed with costs being devoid of merits.

4. The workman filed replication to the written reply wherein the contents of the written reply except admitted facts on the claim statement, are denied as wrong and averments of claim statement are reiterated.

5. From the pleadings of the parties following issues were framed vide order dated 22.09.2022:

1. Whether the workman has been illegally terminated by the management ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW

3. Whether the appointment of the workman was purely contractual in nature ? OPM
4. Relief.

6. In evidence, the workman Vijay Kumar examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to 'W6'.

Exhibit 'W1' is copy of letter dated 10.06.2010 issued from Director, Principal, GMCH, Sector 32, Chandigarh Establishment Branch - III for recruitment to the post of clerk.

Exhibit 'W2' is copy of public notices issued by Director, Principal, GMCH, Sector 32, Chandigarh, relating to reference advertisement No. GMCH/Estt.III/EA4/10/03503 dated 21.01.2010.

Exhibit 'W3' is copy of letter dated 20.07.2010 issued by Office Superintendent (Estt.-III) for Director, Principal, GMCH, Sector 32, Chandigarh Establishment Branch - III relating to subject of interview for the post of clerk on contract/regular basis in GMCH.

Exhibit 'W4' is copy of order dated 24.08.2010 issued by Professor Raj Bahadur, Director, Principal, GMCH, Sector 32, Chandigarh whereby the appointment was offered to the post of Clerk in General Category purely on contract basis.

Exhibit 'W5' is copy of order dated 08.04.2021 issued by Director, Principal, GMCH, Sector 32, Chandigarh, incorporating the name of the candidates who were appointed as Clerk/Steno-Typist on direct contract basis.

Exhibit 'W6' is copy of failure report memo No. 256 dated 14.02.2022 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh.

On 14.03.2023 the workman closed his evidence in affirmative.

7. On the other hand, the management examined MW1 Gurdeep Singh - Senior Assistant, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'. On 24.03.2023 Learned Law Officer closed evidence on behalf of the management.

8. I have heard arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below:-

Issues No. 1 & 3 :

9. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

10. Onus to prove issue No.1 is on the workman and onus to prove issue No.3 is on the management.

11. Workman Vijay Kumar examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with documents Exhibit 'W1' to Exhibit 'W6'.

12. On the other hand, management examined MW1 Gurdeep Singh-Senior Assistant, GMCH, Sector 32, Chandigarh who vide his affidavit Exhibit 'MW1/A' deposed that the appointment was purely on contract basis and as per Clause No.1 of the appointment letter i.e. TENURE:- the contract employment was for a period of six months further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee. Further as per condition No. 9 of General Conditions of appointment letter, the contract appointment will not count as service and will not bestow upon the appointee any claim or right for regular appointment against any post in this institute. Since, the appointment was purely on contract basis as a stop gap arrangements for the emergency duties till the posts are filled on regular basis initially for six months, which was further extended from time to time on requirement basis, hence on filing up the said posts

on regular basis by the Chandigarh Administration under Common Cadre System the existing tenure of contractual appointment was terminated by the GMCH to enable to join the new incumbents appointed on regular basis. The existing / last term of the contract has been got approved from the Finance Department through Secretary Medical Education and Research and the said term was extended up to the period mentioned against each or till the regular incumbent joins, whichever is earlier on 'last come first go' policy. In view of the aspect of joining of regular incumbent in the Chandigarh Administration, it was not feasible for GMCH to draw two salaries against one post. Hence, the tenure of the appointment of the workman was terminated as per the terms & conditions of the extension letter. The vacancy of Clerk against which said employee was appointed on contract basis has been filled up on regular basis by the Chandigarh Administration under common cadre system. The workman was well known of the fact that his appointment was purely on contract basis as it was clearly mentioned in the advertisement as well as in the appointment orders. The workman joined after accepting the terms & condition of the appointment letter. After the six months of initial tenure of contractual appointment, the workman worked on extension / terms basis, which were extended upon the period of extension or till the regular incumbent joins, whichever is earlier on 'last come first go' policy basis.

13. From the oral as well documentary evidence led by the parties, it has come on record that there is no dispute between the parties with regard to the facts that GMCH issued an advertisement on 21.01.2010 for appointment as Clerks on a consolidated salary of ₹ 9,500/- per month on contractual basis for a period of six months. Further there is no dispute between the parties with regard to the fact that qualification for appointment as a Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English and last date for submitting the application was 19.02.2010. Further the facts remained undisputed between the parties that the workman applied for the post of Clerk and he was called for typing test on 03.07.2010 vide letter dated 10.06.2010 / Exhibit 'W1'. Further, there is no dispute between the parties with regard to the facts that the workman was selected and appointed as Clerk on contract basis vide order dated 24.08.2010 / Exhibit 'W4'. Learned Law Officer for the management failed to controvert the fact that on the basis of educational qualifications, typing test, performance in the interview and on the recommendations of the Selection Committee, the workman was selected to the post of Clerk. MW1 Gurdeep Singh when put to cross-examination admitted as correct that all the procedure has been followed by the management before issuing the advertisement of posts in the newspaper. MW1 further stated that typing test of candidates was taken and those who qualified the typing test were called for interview. MW1 admitted as correct that the workman had been selected against the sanctioned post. The workman has also not disputed the fact that he was engaged on contractual post for a period of six months, which was renewed after every six months. In this regard, AW1 Vijay Kumar in his cross-examination admitted as correct that initially he was engaged on contractual post for a period of six months. AW1 in his cross-examination further stated that his contractual appointment was renewed after every six months.

14. From the above stated facts and version of MW1 and AW1, it is duly proved on record that the workman applied for the post of Clerk in response to advertisement issued by the management and after qualifying the typing test he appeared before the Selection Committee for interview. The workman was selected to the post of Clerk and joined services with the management on 01.09.2010 on the basis of appointment order dated 24.08.2010 / Exhibit 'W4'. The services of the workman were terminated on 09.04.2021 vide order Exhibit 'W5'. The management has not disputed the fact that the workman worked with the management for about 11 years against the sanctioned post of Clerk.

15. The workman has not disputed the fact that his services were purely contractual in nature. The dispute is confined to the legality of termination order Exhibit 'W5'. The Learned Law Officer has argued that since the services of the workman was contractual in nature and this fact was known to him since his joining on the basis of appointment letter Exhibit 'W4'. In the appointment letter Exhibit 'W4', under head 'Tenure', it is specifically mentioned that this appointment is purely on contract basis. The tenure of the contract appointment

is initially for a period of six months, which is further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee or till the regular incumbent joins whichever is earlier. Learned Law Officer laid much stress upon the fact that all the sanctioned posts of the clerical staff of the management have merged with the common cadre of the Chandigarh Administration and the regular incumbent has joined at the place of workman, therefore, the termination of the workman is as per the condition incorporated in appointment letter Exhibit 'W4'. To support his contention Learned Law Officer referred cross-examination of MW1 Gurdeep Singh wherein he voluntarily stated that in their appointment letter it is mentioned that when the regular employee will join, they will be relieved from the duties. MW1 Gurdeep Singh in his cross-examination further stated that all the sanctioned posts of the clerical staff of the management will merge with the common cadre of the Chandigarh Administration. Learned Law Officer further referred cross-examination of AW1 Vijay Kumar wherein he has stated that his services were terminated by the management on selection of regular incumbent. On the other hand, Learned Representative for the workman has argued that the workman has completed 240 days of statutory period of service in 12 calendar months preceding his termination. Thus, the workman fulfils the requirement of Section 25-B of the ID Act and once the workman fulfils the requirement of Section 25-B of the ID Act, the services of the workman cannot be terminated except in compliance with the conditions incorporated in Section 25-F of the ID Act. In the present case, the management failed to comply with any of the conditions incorporated in Section 25-F of the ID Act. To support his arguments, Learned Representative for the workman referred cross-examination of MW1 Gurdeep Singh, wherein he stated that no charge sheet was issued and no retrenchment compensation was paid to the workman before dispensing with his / her services. To my opinion, the arguments advanced by Learned Representative for the workman carries force as it is well settled law that where pre-requisite for valid retrenchment as laid down in Section 25-F of the ID Act has not been complied with, retrenchment bringing about termination of service is *ab-initio* void. The relevant provisions of Section 25-F provides as under :—

"25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

16. The careful scrutiny of the appointment letter Exhibit 'W4' would reveal that as per Clause 4 under head 'Tenure', the contract appointment can be terminated at any time (on either side) by giving one month's notice or by giving one month's salary, without assigning any reason or on account of failure to complete the period of contract appointment to the satisfaction of the competent authority. Similarly, in case, one month notice for resignation is not given, you will have to deposit the salary for the period falling short of one month alongwith the resignation letter.

17. In the present case, the workman has not submitted any resignation but it is the management, who has terminated the services of the workman vide order dated 08.04.2021 / Exhibit 'W5' w.e.f. 09.04.2021 (A.N.), meaning thereby that the management has not issued to workman one month's prior notice mentioning the reasons of termination or did not offer to pay or paid salary in lieu of notice period, which is violative to provisions of Section 25-F of the ID Act. The judgments of Hon'ble Apex Court referred by Learned

Representative for the workman reported in *1989 SCC (L&S) 565* titled as *Narotam Chopra Versus Presiding Officer, Labour Court & Others* and reported in *2010(3) SLR 248* titled as *Ramesh Kumar Versus State of Haryana*, are applicable to the facts of the present case to an extent.

18. The creation of common cadre by the Chandigarh Administration does not mean that the vacancies against the sanctioned post / posts is / are not in existence.

19. In view of the reasons recorded above, though it is proved that the appointment of the workman was on contractual basis against the sanctioned post but termination of services of the workman being violative to Section 25-F of the ID Act is illegal and therefore the same is hereby set aside.

20. Accordingly, issue No.1 is proved in favour of the workman and against the management. Issue No.3 being not disputed needs no adjudication and stands decided accordingly.

Issue No. 2 :

21. Onus to prove this issue is on the workman.

22. This issue is necessary consequence of the findings of issue No.1. Since, issue No.1 is proved in favour of the workman and the termination order being illegal is set aside, thus the workman is entitled to reinstatement with continuity of service and 50% back wages. However, the terms & conditions of the service of the workman shall remain the same as incorporated in appointment letter Exhibit 'W4'.

23. Accordingly, this issue is proved in favour of the workman and against the management.

Relief :

24. In the view of foregoing finding on the issues above, this industrial dispute is allowed and the workman is reinstated into service with continuity of service and 50% back wages. However, the terms & conditions of the service of the workman shall remain the same as incorporated in appointment letter Exhibit 'W4'. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 29.03. 2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 28th April, 2023

No. 13/1/9973-HII(2)-2023/5827.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. 7/2022 dated 29.03.2023 delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

DEEPIKA SEHGAL W/O SH. YOGESH ARORA, AGED 33 YEARS, R/O # 2522-C, FIRST FLOOR, SUNNY ENCLAVE, KHARAR, DISTRICT MOHALI (AADHAR CARD NO. 4080 1194 0065) (MOBILE NO. 8360713492). (Workman)

AND

GOVERNMENT MEDICAL COLLEGE AND HOSPITAL THROUGH ITS DIRECTOR/
PRINCIPAL, SECTOR 32, CHANDIGARH. (Management)

AWARD

1. Deepika Sehgal, workman has filed statement of claim under Section 2-A(2) of the Industrial Disputes Act, 1947 (*hereinafter in short called 'ID Act'*), wherein it is averred that Chandigarh Administration, Department of Personnel issued letter dated 10.02.2011 providing for the criteria for appointment to the post of Clerk / Steno Typist. Even a proforma was prescribed for applying for the post. After the publication of the criteria, The Government Medical College & Hospital, Sector 32, Chandigarh (*hereinafter referred as 'GMCH'*) issued an advertisement No.23183 dated 05.07.2013 for appointment as Clerks on a consolidated salary of ₹22,300/- per month on contractual basis for a period of one year, which was liable to be extended. The qualification for appointment as a Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English. Last date of receipt of online application was 27.08.2013. The workman applied for the post of Clerk. As per the criteria laid down by the Chandigarh Administration, a public notice was issued for appearing in the written test of General Knowledge and proficiency in English language and grammar on 23.02.2014. The workman appeared in written test and thereafter she was directed to appear for typing test. There were 639 Candidates, who had been asked to appear in the typing test. The result was published on 03.02.2014. A list of provisionally eligible and not eligible candidates for the post of Clerks on direct contract basis after scrutiny was published in the newspaper. Workman was eligible in all respect. After holding the test, a public notice was again published on 26.02.2014 short listing the candidates. On the basis of educational qualifications, marks obtained in the written test and performance in the interview, a combined merit list was prepared. The name of workman appears at serial No.9 and she has been appointed as an OBC candidate. Although a proper procedure was followed for appointment of the workman, yet the appointment was made on contract basis. Workman was directed to undergo medical fitness examination and the workman appeared for the medical examination. On the basis of the qualification, typist and interview the workman was selected and appointed as a Clerk on contract basis on a consolidated salary on ₹ 22,300/- per month for a period of one year vide appointment letter bearing endorsement No.GMCH/Estt./III/EA4/14/2172-82 dated 05.06.2014. The workman joined as a Clerk on 01.09.2014. The appointment of the workman was extended from time to time. The above facts leave no manner of doubt that the appointment had been made in a transparent manner and the procedure, which is required to be followed for appointment on regular basis, was followed in case of workman before appointing her. The workman had been continuing in uninterrupted service w.e.f. 20.06.2014 when all

of sudden her services were terminated on 09.04.2021 vide termination order bearing Endorsement No.GMCH/Estt./III/EA1/2021/14611-20 dated 09.04.2021 without issuance of any charge sheet, holding any inquiry or payment of any retrenchment compensation. The workman had rendered more than 11 years of continuous service. The workman submitted a demand notice dated 30.04.2021 under registered AD post to the Director Principal of GMCH for reinstatement in service with full back wages and continuity of service. The conciliation proceedings conducted by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh failed. The failure report bears Memo No.265 dated 14.02.2022. The workman along with similar situated employees had filed OA No.060/00947 of 2016 titled as Shalu & Others Versus U.T. Chandigarh & Another before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh for striking down the unilateral and arbitrary clause in the appointment letter contrary to the Rules of appointment of appointment of the workman on contract basis. However, her services were terminated during the pendency of the OA, which has now become infructuous. The workman was able to get employment through an outsourcing agency in the Engineering Department, U.T Chandigarh on a much lower salary on 28.05.2021. The posts are still lying vacant as after termination the management has re-employed person through outsourcing. Therefore, the action of the management in terminating the services of the workman is also an act of unfair labour practice. Prayer is made that the workman may be reinstated into service with full back wages and continuity of service by adjusting the salary paid to her through the outsourcing agency after her re-employment.

2. On notice, the management appeared through Law Officer and contested the claim statement by filing written reply on 29.07.2022 wherein preliminary objections are taken on the grounds that the appointments of the workman was purely on contract basis. As per Clause No.1 of the appointment letter i.e. TENURE:- the contract employment was for a period of six months further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee. Further as per condition No.9 of General Conditions of appointment letter, the contract appointment will not count as service and will not bestow upon the appointee any claim or right for regular appointment against any post in this institute. Since, the appointment was purely on contract basis as a stop gap arrangements for the emergency duties till the posts are filled on regular basis initially for six months, which was further extended from time to time on requirement basis, hence on filing up the said posts on regular basis by the Chandigarh Administration under Common Cadre System the existing tenure of contractual appointment was terminated by the GMCH to enable to join the new incumbents appointed on regular basis.

3. Further on merits, it is stated that the facts that Chandigarh Administration, Department of Personnel issued letter dated 10.02.2011 providing for the criteria for appointment to the post of Clerk / Steno Typist and thereafter publication of advertisement dated 05.07.2013 for appointment of Clerks on contract basis for a period of one year, qualification for appointment as Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English, last date of receipt of on-line application was 27.08.2013, conducting of written test on 23.02.2014 and appearance of the workman in the same and thereafter directing the workman to appear in typing test, publication of provisional eligible and not eligible candidates after scrutiny are replied in a formal manner being matter of record. Further similar stand is taken as taken in the preliminary objections. It is stated that the existing / last term of the contract has been got approved from the Finance Department through Secretary Medical Education and Research and the said term was extended up to the period mentioned against each or till the regular incumbent joins, whichever is earlier on 'last come first go' policy. In view of the aspect of joining of regular incumbent in the Chandigarh Administration, it was not feasible for GMCH to draw two salary against one post. Hence, the tenure of the appointment of the workman was terminated as per the terms & conditions of the extension letter. GMCH vide letter dated 07.07.2021 filed the reply to the demand notice under Section 2-A of the ID Act before Assistant Labour Commissioner-cum-Conciliation Officer. As per record of their office, the workman has not got any relief / stay from Hon'ble Court in OA No.060/00947/2016 titled as Shalu and Others

Versus U.T. Chandigarh & Others, which is still pending before the Hon'ble Central Administrative Tribunal (CAT), Chandigarh Bench, Chandigarh. The vacancies of Clerks against which the employees / workman were appointed on contract basis have been filled up on regular basis by the Chandigarh Administration under the Common Cadre System. The workman was well known of the fact that her appointment was purely on contract basis as it was clearly mentioned in the advertisement as well as in the appointment orders. The workman joined after accepting the terms & condition of the appointment letter. After the six months of initial tenure of contractual appointment, the workman worked on extension / terms basis, which were extended upon the period of extension or till the regular incumbent joins, whichever is earlier on 'last come first go' policy basis. Prayer is made that the claim statement may be dismissed with costs being devoid of merits.

4. The workman filed replication to the written reply wherein the contents of the written reply except admitted facts on the claim statement, are denied as wrong and averments of claim statement are reiterated.

5. From the pleadings of the parties following issues were framed vide order dated 22.09.2022 :—

1. Whether the workman has been illegally terminated by the management ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW
3. Whether the appointment of the workman was purely contractual in nature ? OPM
4. Relief.

6. In evidence, the workman Deepika Sehgal examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to 'W11'.

Exhibit 'W1' is copy of letter dated 10.02.2011 issued from Joint Secretary Personnel, for Home Secretary Chandigarh Administration, relating to the subject of criteria for appointment to the post of clerk/steno-typist.

Exhibit 'W2' to 'W7' are copies of public notices dated 05.07.2013, 10.02.2014/11.02.2014, 30.10.2013, 03.02.2014, 21.02.2014, 26.02.2014, issued by Director Principal, GMCH, Sector-32, Chandigarh Establishment Branch-III.

Exhibit 'W8' is copy of combined merit list for the post of Clerks on direct contract basis for which interview was held on 27.05.2014.

Exhibit 'W9' is copy of order dated 05.06.2014 issued by Director Principal, GMCH, Chandigarh, relating to the candidates offered an appointment against the post of Clerk.

Exhibit 'W10' is copy of order dated 08.04.2021 of Director Principal, GMCH, Chandigarh incorporating the name of the officials who were appointed as Clerk / Steno-Typist on direct contract basis.

Exhibit 'W11' is copy of failure report memo No. 265 dated 14.02.2022 of Assistant Labour Commissioner-cum-Conciliation Officer, U.T, Chandigarh.

On 14.03.2023 the workman closed her evidence in affirmative.

7. On the other hand, the management examined MW1 Gurdeep Singh - Senior Assistant, GMCH, Sector 32, Chandigarh, who tendered his affidavit Exhibit 'MW1/A'. On 24.03.2023 Learned Law Officer closed evidence on behalf of the management.

8. I have heard arguments of Learned Representative for the workman and Learned Law Officer for the management and perused the judicial file. My issue-wise findings are as below :—

Issues No. 1 & 3 :

9. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

10. Onus to prove issue No.1 is on the workman and onus to prove issue No.3 is on the management.

11. Workman Deepika Sehgal examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported her oral version with documents Exhibit 'W1' to Exhibit 'W11'.

12. On the other hand, management examined MW1 Gurdeep Singh - Senior Assistant, GMCH, Sector 32, Chandigarh who vide his affidavit Exhibit 'MW1/A' deposed that the appointment was purely on contract basis and as per Clause No.1 of the appointment letter i.e. TENURE:- the contract employment was for a period of six months further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee. Further as per condition No.9 of General Conditions of appointment letter, the contract appointment will not count as service and will not bestow upon the appointee any claim or right for regular appointment against any post in this institute. Since, the appointment was purely on contract basis as a stop gap arrangements for the emergency duties till the posts are filled on regular basis initially for six months, which was further extended from time to time on requirement basis, hence on filing up the said posts on regular basis by the Chandigarh Administration under Common Cadre System the existing tenure of contractual appointment was terminated by the GMCH to enable to join the new incumbents appointed on regular basis. The existing / last term of the contract has been got approved from the Finance Department through Secretary Medical Education and Research and the said term was extended up to the period mentioned against each or till the regular incumbent joins, whichever is earlier on 'last come first go' policy. In view of the aspect of joining of regular incumbent in the Chandigarh Administration, it was not feasible for GMCH to draw two salaries against one post. Hence, the tenure of the appointment of the workman was terminated as per the terms & conditions of the extension letter. The vacancy of Clerk against which said employee was appointed on contract basis has been filled up on regular basis by the Chandigarh Administration under common cadre system. The workman was well known of the fact that her appointment was purely on contract basis as it was clearly mentioned in the advertisement as well as in the appointment orders. The workman joined after accepting the terms & condition of the appointment letter. After the six months of initial tenure of contractual appointment, the workman worked on extension / terms basis, which were extended upon the period of extension or till the regular incumbent joins, whichever is earlier on 'last come first go' policy basis.

13. From the oral as well documentary evidence led by the parties, it has come on record that undisputedly Chandigarh Administration issued letter dated 10.02.2011 / Exhibit 'W1' providing for the criteria for appointment to the post of Clerk / Steno-typist. The letter dated 10.02.2011 was accompanied with selection criteria of Clerk and Steno-typist, the proforma for applying for the post. Further, there is no dispute between the parties with regard to the facts that after publication of the criteria, GMCH issued an advertisement No.23183 dated 05.07.2013 / Exhibit 'W2' for appointment as Clerks on a consolidated salary of ₹ 22,300/- per month on contractual basis for a period of one year, which was liable to be extended. Further there is no dispute between the parties with regard to the fact that qualification for appointment as a Clerk was Bachelor's Degree and proficiency in operation of Computer (word processing and spreadsheets) and typing speed of 30 words per minute in English and last date of receipt of online application was 27.08.2013. Further the facts remained undisputed between the parties that the workman applied for the post of Clerk and as per the criteria

laid down by the Chandigarh Administration, a public notice Exhibit 'W3' was issued for appearing in the written test of General Knowledge and proficiency in English language and grammar on 23.02.2014. The workman appeared in written test and there after she was directed to appear for typing test vide notice Exhibit 'W4'. Undisputedly, there were 639 candidates, who had been asked to appear in the typing test and result was published on 03.02.2014 by way of public notice Exhibit 'W5'. Further, there is no dispute between the parties with regard to the facts that vide Exhibit 'W6' a list of provisionally eligible and not eligible candidates for the post of clerks on direct contract basis after scrutiny was published in the newspaper. It is also an undisputed fact that after holding the test, a public notice Exhibit 'W7' was again published on 26.02.2014, short listing the candidates. Learned Law Officer for the management failed to controvert the fact that on the basis of educational qualifications, marks obtained in the written test and performance in the interview, a combined merit list was prepared and the workman was selected to the post of Clerk. MW1 Gurdeep Singh when put to cross-examination admitted as correct that all the procedure has been followed by the management before issuing the advertisement of posts in the newspaper. MW1 further stated that written test and typing test of candidates was taken and those who qualified the typing test were called for interview. MW1 admitted as correct that the workman had been selected against the sanctioned post. The workman has also not disputed the fact that she was engaged on contractual post for a period of one year which was renewed after every six months. In this regard, AW1 Deepika Sehgal in her cross-examination admitted as correct that initially she was engaged on contractual post for a period of one year. AW1 in her cross-examination further stated that her contractual appointment was renewed after every six months.

14. From the above stated facts and version of MW1 and AW1, it is duly proved on record that the workman applied for the post of Clerk through online process and after qualifying the written test typing test she appeared before the Selection Committee for interview. The workman was selected to the post of Clerk and joined services with the management on 23.06.2014 on the basis of appointment order dated 05.06.2014 / Exhibit 'W9'. The services of the workman were terminated on 09.04.2021 vide order Exhibit 'W10'. The management has not disputed the fact that the workman worked with the management for about 7 years against the sanctioned post of Clerk.

15. The workman has not disputed the fact that her services were purely contractual in nature. The dispute is confined to the legality of termination order Exhibit 'W10'. The Learned Law Officer has argued that since the services of the workman was contractual in nature and this fact was known to her since her joining on the basis of appointment letter Exhibit 'W9'. In the appointment letter Exhibit 'W9', under head 'Tenure', it is specifically mentioned that this appointment is purely on contract basis. The tenure of the contract appointment is initially for a period of one year, which is further extendable on the basis of requirement of services and subject to the satisfactory work & conduct report of the appointee or till the regular incumbent joins whichever is earlier. Learned Law Officer laid much stress upon the fact that all the sanctioned posts of the clerical staff of the management have merged with the common cadre of the Chandigarh Administration and the regular incumbent has joined at the place of workman, therefore, the termination of the workman is as per the condition incorporated in appointment letter Exhibit 'W9'. To support his contention Learned Law Officer referred cross-examination of MW1 Gurdeep Singh wherein he voluntarily stated that in their appointment letter it is mentioned that when the regular employee will join, they will be relieved from the duties. MW1 Gurdeep Singh in his cross-examination further stated that all the sanctioned posts of the clerical staff of the management will merge with the common cadre of the Chandigarh Administration. Learned Law Officer further referred cross-examination of AW1 Deepika Sehgal wherein she has stated that her services were terminated by the management on selection of regular incumbent. On the other hand, Learned Representative for the workman has argued that the workman has completed 240 days of statutory period of service in 12 calendar months preceding her termination. Thus, the workman fulfils the requirement of Section 25-B of the ID Act and once the workman fulfils the requirement of Section 25-B of the ID Act, the

services of the workman cannot be terminated except in compliance with the conditions incorporated in Section 25-F of the ID Act. In the present case, the management failed to comply with any of the conditions incorporated in Section 25-F of the ID Act. To support his arguments, Learned Representative for the workman referred cross-examination of MW1 Gurdeep Singh, wherein he stated that no charge sheet was issued and no retrenchment compensation was paid to the workman before dispensing with his / her services. To my opinion, the arguments advanced by Learned Representative for the workman carries force as it is well settled law that where pre-requisite for valid retrenchment as laid down in Section 25-F of the ID Act has not been complied with, retrenchment bringing about termination of service is ab-initio void. The relevant provisions of Section 25-F provides as under :—

"25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."

16. The careful scrutiny of the appointment letter Exhibit 'W9' would reveal that as per Clause 4 under head 'Tenure', the tenure of contract appointment can be terminated at any time by giving one month's notice by either side i.e. the appointee or the appointing authority, without assigning any reason whatsoever. It will be open to the administration to pay salary in lieu of notice period falling short of the stipulated one month. Similarly, if he / she wishes to resign from the post, he / she may do so by depositing pay and allowances in lieu of notice period by which it falls short of one month along with his / her resignation notice, failing which an interest @ 18% P.A. will be charged w.e.f. the date of submission of resignation notice.

17. In the present case, the workman has not submitted any resignation but it is the management, who has terminated the services of the workman vide order dated 08.04.2021 / Exhibit 'W10' w.e.f. 09.04.2021 (A.N.), meaning thereby that the management has not issued to workman one month's prior notice mentioning the reasons of termination or did not offer to pay or paid salary in lieu of notice period, which is violative to provisions of Section 25-F of the ID Act. The judgment of Hon'ble Apex Court referred by Learned Representative for the workman reported in **1989 SCC (L&S) 565** titled as **Narotam Chopra Versus Presiding Officer, Labour Court & Others** and another judgment of Hon'ble Apex Court reported in **2010(3) SLR 248** titled as **Ramesh Kumar Versus State of Haryana**, are applicable to the facts of the present case to an extent.

18. The creation of common cadre by the Chandigarh Administration does not mean that the vacancies against the sanctioned post / posts is / are not in existence.

19. In view of the reasons recorded above, though it is proved that the appointment of the workman was on contractual basis against the sanctioned post but termination of services of the workman being violative

to Section 25-F of the ID Act is illegal and therefore the same is hereby set aside.

20. Accordingly, issue No.1 is proved in favour of the workman and against the management. Issue No.3 being not disputed needs no adjudication and stands decided accordingly.

Issue No. 2 :

21. Onus to prove this issue is on the workman.

22. This issue is necessary consequence of the findings of issue No.1. Since, issue No.1 is proved in favour of the workman and the termination order being illegal is set aside, thus the workman is entitled to reinstatement with continuity of service and 50% back wages. However, the terms & conditions of the service of the workman shall remain the same as incorporated in appointment letter Exhibit 'W9'.

23. Accordingly, this issue is proved in favour of the workman and against the management.

Relief :

24. In the view of foregoing finding on the issues above, this industrial dispute is allowed and the workman is reinstated into service with continuity of service and 50% back wages. However, the terms & conditions of the service of the workman shall remain the same as incorporated in appointment letter Exhibit 'W9'. The management is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the amount of consequential benefits from the date of this award till the date of actual realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 29.03. 2023.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Deepak Kumar, S/o Subhash Gulati, R/o H. No. 691, Ground Floor, Sector 41-A, Chandigarh, have changed my name from Deepak Kumar to Deepak Gulati.

[513-1]

I, Babita Gupta, W/o Sh. Arun Goyal, R/o H. No. 325, Sector 33-A, Chandigarh, have changed my name from Babita Gupta to Babita Goyal.

[514-1]

I, Pawan Kumar Arora, S/o Late Sh. Satish Kumar, R/o H.No. 3236, H.B.C. Dhanas, U.T., Chandigarh, have changed my name from Pawan Kumar Arora to Pawan Kumar.

[515-1]

I, Usha Rani, W/o Late Sh. Vidya Sagar Aggarwal, R/o H.No. 566, Sector, 10-D, Chandigarh, have changed my name from Usha Rani to Usha Aggarwal.

[516-1]

I, Meenu, W/o Vishal Kumar, # 702/20, Bapudham Colony, Sector, 26, Chandigarh, have changed my name to Meena Kumari.

[517-1]

I, Dharma Nand, S/o Satya Prasad, R/o 2193/32, PWT Manimajra, Chandigarh do here by solemnly affirm and declare as under. I have changed my name from Dharama Nand to Dharma Nand.

[518-1]

I, Veena, W/o Dharma Nand, R/o 2193/32, PWT Manimajra, Chandigarh do hereby solemnly affirm and declare as under. I have changed my name from Beena Devi to Veena.

[519-1]

I, Keshav, S/o Man Bahadur, R/o 925, Hallomajra, Chandigarh-160002. I have changed my name from Keshav to Keshav Kumar.

[520-1]

I, Rahul, S/o Late Tarsem Lal, R/o 581, Near Killa, Manimajra, Chandigarh do have changed my name from Rahul to Rahul Verma.

[521-1]

I, Ram Jatan Mukhia, # 1457 Killa, Sector 45-B, Burail, Chandigarh, have changed my name to Ajay.

[522-1]

I, Pooja, D/o Gurvinder, R/o # 29 D.M.C. Sector 38, (West) Chandigarh, have changed my name to Pooja Bains.

[523-1]

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